

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JENNIFER L. HUDDLESTON

Claimant

VS.

**T-SQUARED CORP. D/B/A THE
CLEANING AUTHORITY**

Respondent

AND

TWIN CITY FIRE INSURANCE CO.

Insurance Carrier

Docket No. 1,019,524

ORDER

Respondent and its insurance carrier requested review of the February 28, 2006, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge (ALJ) denied the medical procedures recommended by Dr. James A. Stuckmeyer as requested by claimant. However, the ALJ found that "structured outpatient physical therapy might be beneficial and should be provided for a trial by sources agreed by the parties."¹

The respondent and its insurance carrier (respondent) argue that claimant's claimed injury, current complaints, and symptoms did not arise out of and in the course of her employment. Respondent also claims that the ALJ erred in ordering it to provide physical therapy to claimant without medical documentation recommending such treatment as required by K.S.A. 44-534a or other evidence regarding its relationship to her claimed work related injury. Specifically, respondent claims the ALJ erred in ordering physical therapy for the claimant when there is no evidence that claimant is in need of physical therapy related to her claimed work injury. Respondent asserts that there is no evidence that claimant's current complaints and the ordered physical therapy are in any way related to

¹ALJ's Preliminary Decision, Feb. 28, 2006.

her work-related injury. Respondent argues that the evidence shows that claimant is at maximum medical improvement (MMI) in regard to her work-related injury.

Claimant asserts that respondent admitted at the Preliminary Hearing that claimant suffered an accidental injury arising out of and in the course of her employment. Accordingly, claimant contends the Board is without jurisdiction to review the ALJ's Preliminary Decision in this matter. In the alternative, claimant asserts that medical records documenting past medical treatment and recommendations of future treatment were submitted through exhibits and testimony and, based on the evidence, the ALJ's Preliminary Decision should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant worked for respondent cleaning houses. On August 25, 2004, while in the course of her employment, she was involved in a traffic accident. Respondent has not disputed that claimant was involved in a traffic accident while she was working for respondent going from one cleaning job to another. Furthermore, there was no dispute or issue raised at the Preliminary Hearing as to whether this accident arose out of claimant's employment or that any injuries directly resulting therefrom are compensable.

Claimant was initially evaluated and treated by a chiropractor for her injuries but was referred to another physician for additional evaluation and treatment. She was treated with medication, and an MRI was performed which suggested cervical hyperlordosis with disk protrusions at C6-7 and C7-T1, desiccation and a limited disk protrusion at the lumbosacral level with an annular tear. Electrodiagnostic studies were performed which suggested limited denervation changes possibly with a radicular origin consistent with a L5-S1 disk herniation.

Claimant was seen by Dr. Wesley Griffitt, a neurosurgeon, on October 7, 2004. Her primary area of pain at that time was the lumbosacral region with pain doing down to the tailbone. She also described burning and numbness that went down the left leg to the foot. Claimant also had lesser complaints of pain in her cervicothoracic region and headaches. Dr. Griffitt believed she was not a surgical candidate for either her neck or low back. Claimant was referred to Dr. Bradley Breeden, who ultimately referred her to Dr. Vito Carabetta.

Claimant saw Dr. Carabetta in January 2005. At that time she was complaining of lower back pain, numbness, tingling down her left leg, and a stabbing sharp pain in her back with a grinding feeling. There is no mention in Dr. Carabetta's reports of complaints concerning either her neck or her right leg. He undertook her treatment, which consisted of a series of three epidural steroid injections. Claimant's last visit with Dr. Carabetta was

on May 5, 2005. He believed claimant had only obtained a partial response with the epidural steroid injections and that no other avenues of treatment would be expected to make a significant change in her condition. Dr. Carabetta, therefore, found claimant was at MMI and rated her as having a 10 percent whole person impairment based on the *AMA Guides*.² Claimant testified that after her release from treatment by Dr. Carabetta, her symptoms were the same as before his treatment.

Claimant now has pain in her right leg, which she claims started about six months before the Preliminary Hearing. She claims the symptoms in her right leg have gotten worse in the last six months. She denies any intervening accident. She started her own cleaning business in October 2004 and has had to cancel cleaning appointments with clients about half a dozen times because of problems in her back and legs. She claims she is doing the same kind of work she performed while working for respondent, but now she is only able to clean one house a day.

Claimant was seen by Dr. Stuckmeyer on August 3, 2005. Dr. Stuckmeyer acknowledged that claimant was not a candidate for surgery for the cervical spine conditions. He stated:

In summary, I feel within reasonable medical certainty that as a direct result of the accident date in discussion that the patient did sustain an injury to her cervical spine. She has ongoing complaints consistent with a chronic cervical strain and myofascial pain; however, she has no evidence of radicular symptoms. The MRI of the cervical spine reveals a small disk protrusion at C5-6; however, I would concur with Dr. Griffitt that she is not a surgical candidate specific to this lesion. It is the opinion of this examiner within reasonable medical certainty that [claimant's] cervical complaints are chronic in nature. Utilizing the [AMA *Guides*] I would assess a 5% impairment to the cervical spine causally related to the accident date in discussion.³

Concerning claimant's low back pain with radicular symptoms, Dr. Stuckmeyer opined that claimant would benefit from referral to an orthopedic spine surgeon or a neurosurgeon for further treatment recommendations, including a discogram, myelogram, and post-myelographic CT scan. If those treatment recommendations were not rendered, Dr. Stuckmeyer stated that patient had "plateaued" in her recuperation and rated her as having a 20 percent impairment to the lumbosacral spine based on the *AMA Guides*.⁴

²American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

³P.H. Trans., Cl. Ex. A at 4.

⁴*Id.*

Although the ALJ denied claimant's request for the medical treatment recommended by Dr. Stuckmeyer, he did order that respondent provide claimant with physical therapy. At the Preliminary Hearing, the ALJ asked claimant if she had been provided any physical therapy. Claimant answered that Dr. Carabetta had given her some stretching exercises to do at home. She also stated that Dr. Carabetta mentioned some therapy but did not send her to a physical therapist. There is no mention of physical therapy in the medical records of Drs. Carabetta, Stuckmeyer or Griffitt, except for Dr. Carabetta's description of claimant's prior chiropractic treatments as "physical therapy modalities."⁵

The issues concerning medical treatment, including whether claimant is at MMI and, if so, whether the treatment ordered by the ALJ is appropriate, are questions within the ALJ's jurisdiction to decide and are not reviewable by the Board on appeal from a preliminary hearing order.

Whether claimant's current complaints and need for medical treatment are directly attributable to the August 25, 2004, accident is an issue the Board may review on an appeal from a preliminary hearing order because it gives rise to the jurisdictional issue of whether those injuries arose out of and in the course of her employment.⁶ It is not clear, however, that respondent raised this as an issue at the preliminary hearing before the ALJ. Nevertheless, it appears uncontroverted that her current complaints are directly related to that accident. There is no contrary evidence other than that some symptoms have changed, some have gotten better, some worse, and some are new. Claimant has never been symptom free since the accident. Claimant attributes her current injuries to the work-related accident, as do all the medical providers who have rendered an opinion on that question. Based on the record presented to date, the Board finds claimant's injuries arose out of and in the course of her employment with respondent.

WHEREFORE, it is the finding, decision and order of the Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated February 28, 2006, is affirmed.

IT IS SO ORDERED.

⁵P.H. Trans. (Feb. 23, 2006), Resp. Ex. 1 at 3.

⁶See K.S.A. 44-534a(a)(2) and K.S.A. 2005 Supp. 44-551(b)(2)(A).

Dated this _____ day of May, 2006.

BOARD MEMBER

c: Steven Quinn, Attorney for Claimant
Patricia A. Wohlford, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director